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COW CREEK BAND OF UMPQUA TRIBE OF INDIANS DISTRIBUTION OF JUDGMENT FUNDS ACT OF 1987

SEPTEMBER 15, 1987.—Ordered to be printed

Mr. INOUYE, from the Select Committee on Indian Affairs, submitted the following

REPORT

[To accompany H.R. 1567]

The Select Committee on Indian Affairs, to which was referred the bill (H.R. 1567) the Cow Creek Band of Umpqua Tribe of Indians Distribution of Judgment Funds Act of 1987, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is an amendment in the nature of a substitute and is as follows:

Strike all after the enacting clause and insert the following in lieu thereof:

That this Act may be cited as the "Cow Creek Band of Umpqua Tribe of Indians Distribution of Judgment Funds Act of 1987."

SEC. 2. DEFINITIONS.

For the purposes of this Act—

(1) The term "Secretary" means the Secretary of the Interior.

(2) The term "tribe" means the Cow Creek Band of Umpqua Tribe of Indians, which was extended Federal recognition by the Cow Creek Band of Umpqua Tribe of Indians Recognition Act (25 U.S.C. 712, et seq.).

(3) The term "tribal member" means any individual who is a member of the Cow Creek Band of Umpqua Tribe of Indians within the meaning of section 5 of the Cow Creek Band of Umpqua Tribe of Indians Recognition Act (25 U.S.C. 712c), as amended by section 5 of this Act.

(4) The term "tribe's governing body" means the governing body as determined by the tribe's governing documents.

(5) The term "tribe's governing documents" means either the 'By-Laws of Cow Creek Band of Umpqua Tribe of Indians' which bear an 'approved' date of '9-10-78' or those bylaws as amended or revised or any subsequent final governing document adopted pursuant to section 4 of the Cow Creek Band of Umpqua Tribe of Indians Recognition Act (25 U.S.C. 712b), as amended by section 7 of this Act.

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(6) The term "tribal council" means the general membership of the Cow Creek Band of Umpqua Tribe of Indians convened in a meeting open to all tribal members.

(7) The term "tribal elder" means any tribal member who reached 50 years of age on or before December 31, 1985 and whose name appears on the list compiled pursuant to 4(b)(1)(A).

SEC. 3. JUDGMENT DISTRIBUTION PLAN.

Notwithstanding Public Law 93-134 (25 U.S.C. 1401, et seq.), or any plan prepared or promulgated by the Secretary pursuant to such Act, the judgment funds awarded in United States Claims Court docket number 53-81L shall be distributed and used in the manner provided in this Act.

SEC. 4. DISTRIBUTION AND USE OF FUNDS.

(a) PRINCIPAL PRESERVED; NO PER CAPITA PAYMENTS.—(1) The total judgment fund of $1,500,000, less attorney's fees and loan with the Bureau of Indian Affairs for expert witness testimony during the land claims case, shall be set aside as the principal from which programs under this Act will be funded. Only the interest earned on this principal may be used to fund such programs. There will be no per capital distribution of any funds, other than as specified in this Act.

(2) The Secretary shall—

(A) maintain the judgment fund in an interest-bearing account in trust for the tribe; and

(B) shall disburse funds as provided in this Act within 30 days of receipt by the Portland Area Director, Bureau of Indian Affairs, of a request by the tribe's governing body for disbursement of funds.

(b) ELDERLY ASSISTANCE PROGRAM.—(1) From the principal, the Secretary shall set aside the sum of $500,000 for an Elderly Assistance Program. The Secretary shall provide a one-time-only payment of $5,000 to each tribal elder within thirty days after the tribe's governing body—

(A) has compiled and reviewed for accuracy a list of all tribal members who were 50 years of age or older as of December 31, 1985; and

(B) has made a request for disbursement of judgment funds for the Elderly Assistance Program pursuant to subsection (a) of this section.

(2) Payments of $5,000 to tribal elders shall be made—

(A) to tribal elders by age in descending order, beginning with the oldest tribal elder, until the interest accumulated for one year on the $500,000 has been depleted below the sum of $5,000: *Provided,* That any interest remaining shall carry over to the following year for distribution hereunder in the next $5,000 payment;

(B) on or before January 1 of succeeding years, and will continue to be made to tribal elders in descending order by age until the interest earned in such year on the $500,000 has been depleted below the sum of $5,000: *Provided,* That any interest remaining shall carry over to the following year for distribution hereunder in the next $5,000 payment; and

(C) each year until every individual eligible for payment under this subsection has received a one-time-only payment of $5,000: *Provided,* That when all payments have been completed, the principal sum of $500,000 will be distributed to other tribal programs as provided in this Act and any remaining interest will be distributed to other tribal programs as determined by the tribe's governing body.

(3) If any tribal member eligible for an elderly assistance payment should die before receiving such payment, the money which would have been paid to that individual will be returned to the Elderly Assistance Program fund for distribution in accordance with this section.

(c) HIGHER EDUCATION AND VOCATIONAL TRAINING PROGRAM.—(1) From the principal, the Secretary shall set aside the sum of $100,000 for a Higher Education and Vocational Training Program. Interest earned on such sum shall be disbursed annually in a lump sum to the tribe and will be utilized to provide scholarships to tribal members pursuing college, university or professional education or training. Tribal members seeking vocational training also will be funded from this program, although adult vocational training funding available through a contract with the Bureau of Indian Affairs will be utilized first if an individual is eligible and there is sufficient funding in such program.

(2) When the Elderly Assistance Program under subsection (b) has been completed, the principal funding for the higher education and vocational training program shall be increased to $250,000.

(d) HOUSING ASSISTANCE PROGRAM.—(1) From the principal, the Secretary shall set aside the sum of $100,000 for a Housing Assistance Program for tribal members. Interest earned on such sum shall be disbursed annually in a lump sum to the tribe and may be added to any existing tribal housing improvement programs to supplement them or it may be used in a separate Housing Assistance Program to be established by the tribe's governing body. Such funding may be used for—

(A) rehabilitation of existing homes;

(B) emergency repairs to existing homes;

(C) down payments on new or previously occupied homes; and

(D) if sufficient funding is available in a given year, for purchase or construction of new homes.

(2) When the Elderly Assistance Program under subsection (b) has been completed, the principal funding for the housing assistance program shall be increased to $250,000.

(e) ECONOMIC DEVELOPMENT AND TRIBAL CENTER.—(1) From the principal, the Secretary shall set aside the sum of $250,000 for economic development and, if other funding is not available or not adequate, for the construction and maintenance of a tribal center. Interest earned on such sum shall be disbursed annually in a lump sum to the tribe and may be used for—

(A) land acquisition for business or other activities which would benefit the tribe economically or provide employment for tribal members: *Provided*, That at least 50 per centum of all individuals employed in a tribally operated business acquired or operated under this subsection shall be tribal members or their spouses as available and qualified: *Provided further*, That as new positions open or existing ones are vacated, preference will be given to tribal members or their spouses, but if insufficient numbers of qualified tribal members or their spouses are available to fill at least 50 per centum of the positions offered, nontribal members may be considered for employment;

(B) business development for the tribe, including collateralization of loans for the purchase or operation of businesses, matching funds for economic development grants, joint venture partnerships, and other similar ventures which can be expected to produce profits for the tribe or to employ tribal members;

(C) reservation activities, including forest management, wildlife management and enhancement of wildlife habitats, stream enhancement, and development of recreational areas. The tribe's governing body shall determine what reservation activities will be funded from economic development funds under this subparagraph; or

(D) construction, support, or maintenance of a tribal center.

(2) When the Elderly Assistance Program under subsection (b) has been completed, the principal funding available for economic development and tribal center shall be increased to $400,000.

(f) MISCELLANEOUS TRIBAL ACTIVITIES.—(1) From the principal, the Secretary shall set aside the sum of $50,000 for miscellaneous tribal activities as determined by the tribe's governing body. Interest earned on such sum shall be disbursed annually in a lump sum to the tribe and may be used for—

(A) operating costs of the tribe's governing body, including travel, telephone, and other expenses incurred in the conduct of the tribe's affairs;

(B) legal fees incurred in the conduct of tribal affairs, tribal businesses or other tribal activities, recommended by the tribe's governing body and approved by the tribal council; or

(C) repayment to the Secretary of any funds provided by the Secretary under Bureau of Indian Affairs Contract Numbered POOC14207638.

(2) When the Elderly Assistance Program under subsection (b) has been completed, the principal funding for miscellaneous tribal activities shall be increased to $100,000.

(g) EVERGREEN PROPERTY; COLLATERALIZATION OF LOAN WITH BUREAU OF INDIAN AFFAIRS.—(1) From the principal, the Secretary shall set aside the sum of $315,000 as collateral on the property known as Evergreen. The interest from such amount shall be disbursed annually in a lump sum to the tribe and shall be utilized for payments on the loan property and for maintenance and upgrade of such property. If the tribe's governing body determines that the interest and income together are sufficient to pay off the loan more quickly, it may commit the full interest from $315,000 to repayment of the loan until such time as loan payments are completed or the income from the property is sufficient to complete the loan payments.

(2) When the loan has been paid or the income from the property is sufficient to pay the loan, the principal amount of $315,000 and any remaining interest generated from such sum shall be redistributed to the Housing Assistance Program, Higher

Education and Vocational Training Program, and Economic Development and Tribal Center Program established under this section in such proportions as the tribe's governing body determines to be appropriate.

(h) GENERAL CONDITIONS.—The following conditions will apply to the management and use of the judgment funds by the tribe's governing body:

(1) No amount greater than 10 per centum of the interest earned on the principal may be used for the administrative costs of any of the above programs, except as provided in paragraph (2).

(2) No service area is implied or imposed under any program under this Act. If the costs of administering any program under this Act for the benefit of a tribal member living outside the tribe's Indian Health Service service area are greater than 10 per centum of the interest earned thereon, the tribe's governing body may authorize the expenditure of such funds for that program, but in carrying out the program shall give priority to individuals within the tribe's Indian health service area.

(3) The tribe's governing body may at any time after enactment of this Act declare a dividend to tribal members from the profits from any business enterprise of the tribe. Prior to declaring or distributing dividends, however, the tribe's governing body must first take into consideration the effect of such declaration or distribution of dividends on future operating costs and proposed business expansions. Profits from business enterprises may also be distributed back into any of the programs established under this section provided that future operating costs and proposed expansion costs are first set aside. Any such distribution back into the program under this act shall be proportional to the percentage of principal then being allocated hereunder.

(4) Notwithstanding any other provisions of this Act, interest accrued on the principal prior to enactment of this Act shall as of the date of this Act may be distributed under the tribal programs described in section 4 of this Act.

(5) The tribe's governing body shall adopt and publish in a publication of general circulation regulations which provide standards for the participation of individuals who are eligible for programs established pursuant to subsections (c) and (d) of this section.

(6) Benefits received pursuant to this Act shall be considered supplementary to existing Federal programs and their existence shall not be used by any federal agency as a basis to deny eligibility in whole or in part for existing federal programs.

(7) Any individual who feels he or she has been unfairly denied the right to take part in any program under subsections (b), (c), or (d) of this section may appeal to the Secretary. The Secretary shall provide payments pursuant to this section to any individual who the Secretary determines, after notice and hearing, has been unfairly denied the right to take part in such program.

(8) Notwithstanding any other provisions of this Act, no funds shall be disbursed pursuant to subsections (c) or (d) of this section until one year after enactment of this Act.

(i) (1) Any portion of the principal set aside under subsection (a) which remains after the allocations of the principal required under subsections (b), (c), (d), (e), and (f) have been made shall be allocated among the Housing Assistance Program, the Higher Education and Vocational Training Program, and the Economic Development and Tribal Center Program established under this section in such proportions as the tribe's governing body determines to be appropriate.

(2) If the total amount of the principal set aside under subsection (a) after amounts sufficient to pay attorney's fees and the loan described in subsection (a) have been deducted is insufficient to make all of the allocations of the principal required under subsections (b), (c), (d), (e), and (f), the portion of the principal which is required to be allocated to the purposes provided in subsections (c), (d), (e), and (f) shall be reduced in such proportions as the tribe's governing body determines to be appropriate.

SEC. 5. MEMBERSHIP ROLLS.

(a) Section 5 of the Cow Creek Band of Umpqua Tribe of Indians Recognition Act (25 U.S.C. 712c) is amended to read as follows:

"SEC. 5. TRIBAL MEMBERSHIP.

"(a) Until such time as the Secretary of the Interior publishes a tribal membership roll as mandated in subsection (b) of this section, the membership of the Cow Creek Band of Umpqua Tribe of Indians shall consist of all persons listed in the official tribal roll approved on September 13, 1980, by the tribe's Board of Directors, and their descendants. Following publication by the Secretary of the tribal member-

ship roll mandated in subsection (b) of this section the membership of the Cow Creek Band of Umpqua Tribe of Indians shall consist of all persons listed on such roll.

"(b) Within three hundred and sixty-five days after the enactment of the Cow Creek Band of Umpqua Tribe of Indians Distribution of Judgment Funds Act of 1987, the Secretary shall prepare in accordance with the regulations contained in Part 61 of Title 25 of the Code of Federal Regulations a tribal membership roll of the Cow Creek Band of Umpqua Tribe of Indians. Such roll shall include all Indian individuals who were not members of any other federally recognized Indian tribe on July 30, 1987 and who—

"(1) are listed on the tribal roll referred to in subsection (a);

"(2) are the descendants of any individuals listed pursuant to paragraph (1) born on or prior to enactment of this Act; or

"(3)(A) are the descendants of any individual considered to be a member of the Cow Creek Band of Umpqua Tribe of Indians for the purposes of the treaty entered between such Band and the United States on September 18, 1853; (B) have applied to the Secretary for inclusion in the roll pursuant to subsection (c); and (C) meet the requirements for membership provided in the tribe's governing documents.

"(c) The Secretary shall devise regulations governing the application process under which individuals may apply to have their names placed on the tribal roll pursuant to paragraph 3 of subsection (b).

"(d) After publication of the roll in the Federal Register, the membership of the tribe shall be limited to the persons listed on such roll and their descendants: *Provided*, That the tribe, at its discretion, may subsequently grant tribal membership to any individual of Cow Creek Band of Umpqua ancestry who pursuant to tribal procedures, has applied for membership in the tribe and has been determined by the tribe to meet the tribal requirements for membership in the tribe: *Provided further*, That nothing in this Act shall be interpreted as restricting the tribe's power to impose additional requirements for future membership in the tribe upon the adoption of a new constitution or amendments thereto as provided in section 7 of the Cow Creek Band of Umpqua Tribe of Indians Distribution of Judgment Funds Act of 1987.".

(b) TECHNICAL CORRECTION.—The Cow Creek Band of Umpqua Tribe of Indians Recognition Act is amended by striking out "Umpqua Tribe of Oregon" each place it appears and inserting in lieu thereof "Umpqua Tribe of Indians".

SEC. 6. ELIGIBILITY OF NONTRIBAL MEMBERS.

(a) IN GENERAL.—Notwithstanding any other provision of this Act, any individual who is not a tribal member shall be eligible to participate—

(1) in the programs established under subsections (c) and (d) of section 4 of this Act if such individual—

(A) submits to the Secretary and to the tribe an application for participation in such programs which is accompanied by evidence establishing that such individual is within the group of persons described in section 4(a) of Public Law 96-251; and

(B) is certified by the Secretary as being within such group; and

(2) in the program established under subsection (b) of section 4 of this Act if such individual—

(A) submits to the Secretary and to the tribe, by no later than one hundred and eighty days after the date of enactment of this Act, an application for participation in such program which is accompanied by evidence establishing that such individual is within the group of persons described in section 4(a) of Public Law 96-251; and

(B) is certified by the Secretary as being within such group

(b) BASIS OF CERTIFICATIONS.—In making certifications under subsection (a) of this section, the Secretary may use—

(1) records collected pursuant to Bureau of Indian Affairs Contract Numbered POOC14207638 that are made available to the Secretary by the tribe; and

(2) any other documents, records, or other evidence that the Secretary determines to be satisfactory.

SEC. 7. ORGANIZATION OF TRIBE; CONSTITUTION, BYLAWS AND GOVERNING BODY.

(a) IN GENERAL.—Section 4 of the Cow Creek Band of Umpqua Tribe of Indians Recognition Act (25 U.S.C. 712b) is amended to read as follows:

"SEC. 4. (a) The tribe may organize for its common welfare and adopt an appropriate instrument, in writing, to govern the affairs of the tribe when acting in its gov-

ernmental capacity. The tribe shall file with the Secretary of the Interior a copy of its organic governing document and any amendments thereto.

"(b) Not less than one year following enactment of the Cow Creek Band of Umpqua Tribe of Indians Distribution of Judgment Funds Act of 1987, the tribe's governing body may propose a new governing document or amendments or revisions to the interim governing document, and the Secretary shall conduct a tribal election as to the adoption of that proposed document within one hundred and twenty days from the date it is submitted to the Bureau of Indian Affairs.

"(c) The Secretary shall approve the new governing document if approved by a majority of the tribal voters unless he or she determines that such document is in violation of any laws of the United States.

"(d) Until the tribe adopts and the Secretary approves a new governing document, its interim governing document shall be the tribal bylaws entitled 'By-Laws of Cow Creek Band of Umpqua Tribe of Indians' which bear an 'Approved' date of '9-10-78'.

"(e) Until the tribe adopts a final governing document, the tribe's governing body shall consist of its current board of directors elected at the tribe's annual meeting of August 10, 1986, or such new board members as are selected under election procedures of the interim governing document identified at subsection (d).".

PURPOSE

The purpose of H.R. 1567 is to provide for the distribution and use of funds awarded to the Cow Creek Band of Umpqua Indians by the U.S. Court of Claims. The funds to satisfy the awards, $1,500,000, have already been appropriated. The bill also provides guidelines for establishing the tribal membership, governing documents, and governing body of the tribe.

BACKGROUND

The Cow Creek Band of the Umpqua Tribe was a small group of Indians residing in what is now Douglas County in Southwestern Oregon. In the mid-nineteenth century, this area was the homeland of five linguistically distinct Indian groups. These included the Lower Umpqua Kalawatset, located near the mouth of the Umpqua River; the Yoncalla, located along the midsection of the river; the Umpqua, living near the confluence of the North and South forks of the river; the Molalla, located in the foothills and slopes of the Cascade Mountains; and the Cow Creek Band, located along the Cow Creek, a tributary to the south fork of the Umpqua River. In 1851, the Cow Creek Band was estimated to number about 220 members.

During the decade of the 1850's, Federal agents negotiated five different treaties with the Indians in the Umpqua River watershed. The first of these, and one of the first Indian treaties ratified by the United States Senate with tribes from the Pacific Northwest, was the treaty signed by the Cow Creek Band of Umpqua Indians on September 19, 1853 (10 Stat. 1027).

In the 1853 treaty the Cow Creek Band was promised a reservation and payment of $12,000. In return, the Band ceded 800 square miles of aboriginal land to the United States Government. Pending creation of a permanent reservation, the Cow Creek Indians were moved onto a temporary reservation, and were provided $1000 worth of physical improvements, cattle, and seed grain.

In the fall of 1855, the miner-settler population of the Rogue River Valley attacked and killed Indians camped near the Table Rock Reservation. This action, and the Indian retaliation, sparked nine months of bitter warfare in southwestern Oregon known as

the Rogue River War. At the outbreak of the Rogue River War, most of the Cow Creeks fled the temporary reservation, and used as a sanctuary the mountains of their ancestral homeland. Despite repeated attempts by the United States Army and the militia to track down, kill, or capture them, the majority of the Cow Creek remained in hiding on their ceded land.

A few members of the Band, however, stayed behind to join the Rogue River Indians in battle. During the war, the United States Militia moved onto the temporary reservation, slaughtered the cattle for food and fed the seed grain to their horses. At the close of hostilities, of the members of the Cow Creek Band who remained at the reservation, there survived only 52 members including 18 men, 19 women, and 15 children.

The United States Army removed the surviving Cow Creek members they were able to capture to the Grande Ronde Reservation. The remainder of the payments made to satisfy the provisions of the 1853 treaty were made to the Superintendent of the Grande Ronde Reservation. The Superintendent, in turn, distributed the funds to all the Indians living on the reservation, regardless of their tribal affiliation.

As late as August 1856, eight months after the move of Cow Creek members to the Grande Ronde Reservation, an estimated one hundred Cow Creek Indians were still hiding in the mountains. Despite reports to the contrary, available documents and testimony indicates that few of these members ever moved to the Grande Ronde Reservation. Thus, the majority of the surviving members of the Cow Creek Band did not live on the reservation and did not receive the payments due them. The available documentation also indicates that many members of the Cow Creek Band have at all times, up to the present, resided in their traditional area in what is now southern Douglas County, Oregon.

Although the United States signed a treaty with the Cow Creek Band, its relationship with the Band has been irregular and erratic. For a period of time in the 1850's, a definite relationship was maintained by the United States. The various Indian agents of that era dealt with the Cow Creek as they did with other tribes and bands. After a hiatus in the relationship, it was renewed in 1910–17, when the Bureau of Indian Affairs created the Roseburg Agency in Douglas County which had jurisdiction over 8,000 off-reservation Indians in the area, including the Cow Creek.

In the early 1950's, Congress adopted and began to implement an Indian policy which became known as the Termination policy. Its goal was to terminate, as rapidly as possible, the special relationship between the United States Government and those Indian tribes deemed ready to assume control of their own affairs. At the direction of Congress, the Bureau of Indian Affairs began to identify tribes they felt were ready for termination. They included among these tribes the many small, Federally-recognized tribes and bands of western Oregon. Even though they refused to acknowledge that the Cow Creek Band was a Federally-recognized tribe, out of an abundance of caution, the Bureau included the name of the Cow Creek Band in the legislation developed to terminate the small tribes of western Oregon. Termination of these small tribes and

bands was accomplished by the Act of August 13, 1954 (68 Stat. 724).

The policy of termination proved disastrous for those tribes which experienced it. It has been effectively repudiated by the Congress in several statutes, beginning in 1973, restoring Federal recognition to many of the tribes which had been terminated. In 1982, Congress passed legislation to restore Federal recognition to the Cow Creek Band.

Therefore, until 1982, the Cow Creek Band was not a federally recognized tribe. Nevertheless, in 1980, Congress passed legislation allowing the Cow Creek Band of the Umpqua Tribe of Indians to file with the U.S. Court of Claims any claim the tribe could have filed with the Indian Claims Commission under the Act of August 13, 1946 (60 Stat. 1049) had the Band been recognized as a tribe at the time the 1946 Act was passed. The 1980 Act, however, excluded from this group any person or any descendant of any person who shared in the distribution of funds under two previous Acts enacted on August 13, 1954.

The Cow Creek Band filed in the Court of Claims under the 1980 Act and on June 12, 1984, the United States Court of Claims awarded the Band $1,500,000. H.R. 1567 provided a judgment fund distribution plan for the award.

Today, the tribal membership is based on descent from seven Cow Creek families. The tribal membership totals approximately 700 individuals. In addition, many individuals of Cow Creek descent are not currently members of the tribe. This bill provides for their attaining membership before the tribe holds its 1988 annual election, which must be held before the tribe adopts a new governing document or amends or revises its interim governing document.

Section-by-Section Analysis and Explanation of Substitute Amendment

SECTION 1

This section cites this Act as the "Cow Creek Band of Umpqua Tribe of Indians Distribution of Judgment Funds Act of 1987".

SECTION 2

This section defines certain terms for the purposes of this Act. Among these terms is the difinition of the term "tribal member." H.R. 1567 as introduced defined the term to mean any individual who is a descendant of a person who was considered to be a member of the Cow Creek band when the band signed the 1853 treaty with the United States. The bill as passed by the House of Representatives precludes from membership any participant (or their descendants) in the distribution of funds from the Klamath Tribe or Western Oregon Termination Acts of 1954. The substitute amendment, however, removes the restriction on tribal membership for those individuals and their descendants who participated in the 1954 termination act payments.

Section 2 of the Act also defines the term "tribe's governing document". Until the tribe adopts a governing document purusant to the provisions of this Act, its governing document will be the tribal

bylaws entitled "By-Laws of Cow Creek Band of Umpqua Tribe of Indians" which bear an "Approved" date of "9-10-78." A copy of the 1978 bylaws is printed at the conclusion of this portion of the Committee's report on H.R. 1567.

SECTION 3

This section waives the provisions of Public Law 93-134, which provides for the Secretary of the Interior to submit to the Congress a plan for distribution of judgment funds awarded to Indian tribes by the Court of Claims. This section provides for the distribution of the judgment funds according to a plan submitted by the Cow Creek Band recipients of the award.

SECTION 4

Subsection (a) provides that a sum of $1,500,000 less attorney's fees and certain other expenses relating to the claims will be set aside and held in trust by the Secretary of the Interior as the principal from which programs under the Act are funded. The Secretary of the Interior has made disbursements of $203,840 from the judgment fund for attorney fees and expert assistance needed by the tribe to prosecute its land claims case. As of June 30, 1987, there remained $1,654,230 in the judgment fund, including the principal and interest accrued as of that date. After passage of this legislation, the Secretary is to make no further disbursements of the principal of the judgment fund. Any future payments will be made only from the interest earned on the principal.

Section (a) also provides limitations on the management of the judgment fund. Specifically, the Act allows only for the use of the interest earned on the judgment fund to be used to fund programs established pursuant to the Act. The bill also prohibits per capita distribution of funds from the judgment fund. Finally, the substitute amendment clarifies that the Secretary must continue to maintain the judgment fund in an interest-bearing account, and must disburse funds to the tribe within thirty days of a request for disbursement from the tribe's governing body.

Subsection (b) establishes an Elderly Assistance Program. This provision is premised on the notion that tribal elders will not be likely to benefit from the other programs established in the Act. Consequently, the subsection provides for a one-time payment of $5,000 to each tribal elder. The subsection reserves the interest earned on $500,000 of the judgment fund principal for Elderly Assistance payments.

Subsection (c) establishes a Higher Education and Vocational Training Program. The subsection reserves the interest earned on $100,000 of the judgment fund principal to provide scholarships to tribal members pursuing vocational training, college, university, or professional education.

Subsection (d) establishes a Housing Assistance Program. The subsection reserves the interest earned on $100,000 of the judgment fund principal to provide housing assistance to tribal members. H.R. 1567 provides for funding for purchase or construction of new homes and, if unsufficient funding is not available in a given year,

for rehabilitation and emergency repairs to existing homes and down payments on new or previously occupied homes.

Given the small amount of interest which will be earned on the principal reserved for the housing assistance program, it is unlikely that sufficient funding will be available in a given year for purchase or construction of new homes. Consequently, the substitute amendment reverses the priority for payments under this subsection. Under the substitute amendment, funds will be used for rehabilitation and emergency repairs, and if sufficient funding is available, for construction of new homes.

Subsection (e) authorizes funding for economic development and for construction of a tribal center. The subsection reserves the interest earned on $250,000 of the judgment fund principal to provide economic development assistance to tribal members. The section also allows for the use of interest earned on the judgment fund for the construction and maintenance of a tribal center, but only if other sources of funding are unavailable or inadequate.

Subsection (f) authorizes funding for miscellaneous tribal activities, including legal fees and other expenses incurred by the tribe's governing body in the conduct tribal affairs. The subsection reserves the interest earned on $50,000 of the judgment fund principal for miscellaneous tribal activities. The subsection allows the tribe's governing body great discretion to determine how these funds will be spent.

Subsection (g) requires that the Secretary reserve $315,000 as collateral on tribal property known as Evergreen. The subsection allows the tribe to use interest earned on the judgment fund to make payments to the Evergreen property and to maintain and upgrade the property.

Subsection (h) provides general conditions that apply to the management and use of the judgment funds. Among these is a requirement that the tribe adopt and publish standards for the participation of tribal members in programs established under the Act. This subsection allows the tribe to declare a dividend to tribal members from profits from tribal business enterprises, or to reinvest profits or redistribute them into the programs established by the Act. Paragraph (6) provides that benefits received pursuant to this Act by any individual are to supplement any other federal or state benefits to which the recipient may otherwise be entitled. Finally, the subsection allows the Secretary of the Interior to provide payments pursuant to any of the programs operated by the tribe under section 4 to any individual who has been unfairly denied the right to take part in any tribal program.

SECTION 5

Section 5 includes an amendment to section 5 of the Cow Creek Band of Umpqua Tribe of Indians Recognition Act (Public Law 97-391, Act of Decembr 29, 1982, 25 U.S.C. 712c). This provision sets forth requirements for tribal membership.

Subsection (a) allows for the preparation by the Secretary of the Interior of an interim membership roll. The interim membership is to include all persons listed on the official tribal roll approved on September 13, 1980 by the tribe's Board of Directors. The 1980

membership roll includes every individual who is listed in the response of the tribe to the United States Interrogatory 14 in the United States Claims Court docket numbered 53-81L.

Subsection (b) requires preparation by the Secretary of a permanent tribal membership roll within one year of date of enactment of the Act. The bill directs the Secretary to include on the roll three classes of Cow Creek descendants. First, the bill requires that the Secretary include all those individuals whose names appear on the 1980 roll. Second, the bill requires that the Secretary include on the memership roll any descendants of those on the 1980 roll. Third, the bill allows for persons who are of Cow Creek descendancy who are not currently tribal members to petition for membership.

As introduced, H.R. 1567 would have allowed the Secretarty of the Interior to include in the tribal membership roll individuals who possessed one-eighth degree or more of Cow Creek Band of Umpqua Indian blood. A review of the history of the tribe, however, shows that the United States never took an official roll of the memers of the Cow Creek Band of Umpqua Indians. In addition, the members of the tribe have never seemed to have had their blood quantum officially recorded. In view of this lack of official record, it would be extremely difficult for any individual to conclusively prove any particular degree of Cow Creek blood. The bill as passed by the House of Representatives allows the Secretary to place on the roll any individual who can prove Cow Creek ancestry and meet other tribal requirements for membership. Under this bill, the membership requirements which will be in effect immediately after this Act is passed are those contained in the 1978 bylaws.

H.R. 1567 as passed by the House of Representatives allows the existing tribe to impose additional conditions on membership for those individuals who are not currently tribal members. The substitute amendment removes this authority. Ordinarily, the power to determine its own membership is a fundmental attribute of tribal sovereignty. *See, e.g., Santa Clara, Pueblo* v. *Martinez*, 436 U.S. 49, 72 n. 32 (1978); *United States* v. *Wheeler*, 435 U.S. 313, 322 n. 18 (1978). Congress, however, has the power to define tribal membership when necessary for administrative purposes such as the distribution of tribal property. *See e.g., Delaware Tribal Business Comm.* v. *Weeks*, 430 U.S. 73, 84-86 (1977).

The Cow Creek Band has determined that it will distribute the benefits of the judgment fund through tribal programs instead of through a per capita distribution to descendants. Given this decision by the tribe, which the Committee supports, the substitute amendment attempts to eliminate any possibility that an individual who would have been eligible for a per capita distribution would not be precluded from participation in the judgment fund award by reason of exclusion from tribal membership. Following one year after date of enactment and preparation by the Secretary of the initial membership role, the tribe is free to impose whatever additional conditions on enrollment it determines are desirable.

SECTION 6 (ELIGIBILITY OF NON-TRIBAL MEMBERS)

The prupose of this section is to provide for participation in programs funded by the judgment for all descendants of the Cow Creek Tribe of 1853, including those not currently enrolled as members of the Cow Creek Band of Umpqua Tribe of Indians. At the request of the tribe these judgment funds will be distributed through tribal programs rather than the usual per capita distribution. Because all Cow Creek descendants would otherwise have been eligible for per capita distribution payments, this bill provides for their participation in the judgment funded programs.

H.R. 1567 as passed by the House of Representatives contains a 180-day limitation for non-member descendants to apply for participation in all programs. The substitute amendments to this section retains this limitation for participation in the Elderly Assistance Program because of the compelling need to distribute the long-awaited benefits to tribal elders. However, such a rationale does not apply to the other programs because they will be administered based upon tribal membership for all current and future members of the tribe.

SECTION 7 (ORGANIZATION OF TRIBE; CONSTITUTIONS BY-LAWS AND GOVERNING BODY)

The purpose of this section is to provide the tribe the opportunity to adopt a new governing document or amendments to the present governing document. The tribe's present governing document, which is printed following this portion of the Committee's report, will serve in the interim. The substitute amendment ensures that non-member Cow Creek descendants who are eligible for membership under the tribe's present governing document have the opportunity to attain membership prior to adoption of a new governing document or amendments to the present governing document. This includes any proposed amendment which might modify tribal membership requirements. The tribe's present governing body will govern until the tribal election transpires and the next governing body is elected.

BY-LAWS OF COW CREEK BAND OF UMPQUA TRIBE OF INDIANS (1978)

ARTICLE I—PURPOSE

To promote the general welfare of the Cow Creek Band of Umpqua Tribe of Indians including but not limited to, establishment of Health, Education and Welfare programs for individual members of the band and for the band as a whole.

ARTICLE II—MEMBERSHIP QUALIFICATIONS

Section I. The general membership of this corporation shall be known as the Tribal Council. No persons shall be a member of Tribal Council unless he shall be able to trace his ancestory to the members of the Cow Creek Band who

claimed and lived upon that land described in the treaty of September 19, 1853 with the United States Government.

Section II. A tribal roll shall be prepared under the supervision of the Board of Directors, listing all known persons decended from the members of the original Cow Creek Band, as defined in Section I.

Section III. Any person not listed on the tribal roll, as prepared under the provisions of Section II, may make a written application for inclusion on the roll. The application shall be made to the Secretary of the Board of Directors, and shall be considered by the Board at the next regular meeting after the receipt by the Secretary of the application. The Board shall make such investigation as it deems necessary to verify the right of the applicant to be included on the roll, and may require, as part of its investigation, that the applicant furnish proof of blood lineage. After completing its investigation, but not later than three (3) regular meetings after receipt of the application, the Board shall take action on the application by either accepting or rejecting it. If the application is accepted, the Board shall direct the Secretary to inter the applicants name on the rolls of the Cow Creek Band.

Section IV. Membership of the corporation shall be limited to persons appearing on the roll created under the provisions of Sections II and III above, who are over the age of 18 years and who comply with any other membership requirements, which may be set by the Board. The Secretary shall also keep a separate, listing of members of the Corporation. Such membership roster shall be continuously updated. The membership roll shall determine eligibility to vote at the annual Tribal Council meeting or at any special Tribal Council Meeting.

ARTICLE III—BOARD OF DIRECTORS

Section I. The Board of Directors shall be the governing body of the Cow Creek Band of Umpqua Tribe of Indians. The Board of Directors shall elect officers from its ranks as set out in Article IV hereof. Such officers shall have the duties prescribed for their office as set out in Article IV. The Board may from time to time, delegate authority to committees to conduct specific items of business of the corporation or band. The committees may include associate members, who are not members of the board. Such associate members may participate in all activities of the committee, but may not vote on matters coming before the Board.

The Board of Directors shall be elected annually by eligible voting members of the corporation present at the annual Tribal Council meeting, held under the provisions of Article V, Section II or by written proxy.

Section II. The Board of Directors shall, initially, serve without pay. If, however, such funds should become avail-

able, Board members may be reimbursed, at a reasonable rate, for the time and expense of serving on the Board.

Section III. Any Board member who shall fail to attend three consecutive Board meetings shall be relieved of his office unless the Board shall by a ⅔ majority vote to retain him in office.

Section IV. All vacancies on the Board may be filled on an interim basis by the Board. The Director so selected shall serve until the next annual election meeting of the Tribal Council.

ARTICLE IV—BOARD OF DIRECTORS

Section I. President. The President shall preside over all meetings of the Board of Directors and of the Tribal Council and shall be the chief administrative officer of the corporation. At meetings of the board of directors he shall only vote in case of a tie.

Section II. Vice-President. The Vice-President shall assist the President, when called upon to do so. And in the absence of the President he shall preside at all meetings and assume all functions of the President.

Section III. Secretary. The Secretary shall be responsible for the maintenance of the corporate minute book, the corporate seal, and the roll of the Cow Creek Band and the membership roll of the corporation. Such records shall be open for inspection by Tribal Council members and any other persons having a legitimate interest therein, at reasonable times and places. The Secretary will also be responsible for maintaining records of the correspondence of the corporation. The Secretary shall be present at every meeting of the Board of Directors and Tribal Council and shall keep the minutes thereof. Such minutes shall be inserted in the minute book upon approval at the next following respective meetings of the Board and Tribal Council. He shall give notice of special meetings of the Board or Tribal Council when directed to do so under the provisions of Article V.

Section IV. Treasurer. The Treasurer shall keep the financial records of the corporation, accept, receipt for, preserve, and safeguard all funds in the custody of the Tribal Council, whether same be tribal funds or special funds for which the Council is acting as trustee or custodian. He shall deposit all such funds in such bank or elsewhere as directed by the Board, and shall make and preserve a faithful record of such funds and shall report on all receipts and expenditures and the amount and nature of all funds in his possession or custody, such report being made in writing to the Council at regular meetings and at such times as requested by the Board.

He shall not pay out or otherwise disburse any funds in his possession or custody, or in the possession or custody of the Council, except when properly authorized to do so by the Board of Directors.

The books and records shall be open for inspection by Council members and any other person having a legitmate interest therein, at reasonable times and places. Books and Records shall be subject to audit at the direction of the Board of Directors.

The Treasurer shall be required to give a bond satisfactory to the Board. The Board shall pay for such bonds.

ARTICLE V

Time and Place of Meetings and Procedure:

Section I. Regular meetings of the Board of Directors shall be held on the second Sunday of each month, at the hour of 1:00 p.m., at such a place as the board shall from time to time designate in the minutes. Members of the council and/or other persons invited by the Board may attended the directors meetings and may be heard on any matters concerning the corporation or the band.

Special Meetings. Special meetings may be called by any three members of the Board. Written notice of such meetings shall be given and shall be signed by the Secretary and any Board member participating in the calling of such meeting. A meeting called by the Board members, other than the President, or Secretary, shall indicate on the notice, names of the board members calling the meeting. The notice, in addition shall contain a statement of the time and place of the meeting and shall be given, by mailing such notice to each Board member with postage prepaid, not less than five (5) days prior to the meeting. Notice shall be deem to have been given upon deposit of the notice with postage thereon prepaid in the United States Mail. The Notice shall state in clear and concise language the matter to be acted upon at the special meeting and no other business may be transacted.

The annual meeting of the Board to be held in August of each year, shall be held immediately following the annual Tribal Council meeting held under the provisions of Section II of this Article. At such meeting the Board of Directors shall elect officers of the corporation for the forthcoming year, as required under the provisions of Article III, Section I. and Article IV.

A quorum for the regular meetings, special meetings or the annual meetings of the Board of Directors shall consist of six (6) members, no business shall be transacted unless six (6) members shall be present.

Section II. An Annual meeting of the Tribal Council shall be held on the second Sunday of August of each year, at the hour of 1:00 p.m., at a place to be designated from time to time by the Board of Directors.

Written notice of the annual meeting, including time and place thereof, shall be mailed to all persons appearing on the membership roll of the corporation, maintained by the Secretary under the provisions of Article IV, Section III. Notice shall be given, by mailing such notice to each

member appearing on the latest updated roll, with postage prepaid, not less than five days prior to the meeting. Notice shall be deem to have been given upon deposit of the notice with postage thereon prepaid in the United States Mail. The notice shall state in clear and concise language the matter to be acted upon at the annual meeting of the Tribal Council.

Special Meeting. The President of the Corporation shall call a special meeting of the Tribal Council upon the written request of 15 members of the Council. Notice shall be given, by mailing such notice to each member appearing on the latest updated roll, with postage prepaid, not less than five days prior to the special meeting. Notice shall be deemed to have been given upon deposit of the notice with postage thereon prepaid in the United States Mail. The Notice shall state in clear and concise language on the matter to be acted upon at the special meeting of the Tribal Council and no other business may be transacted.

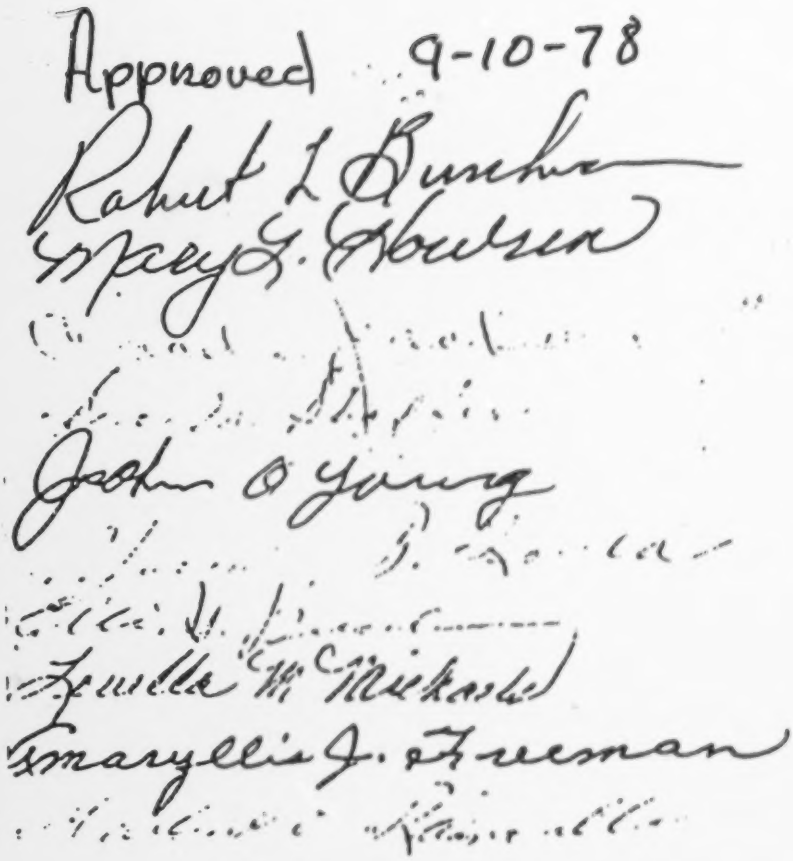
A quorum for either the annual meeting or any special meeting, of the Tribal Council, must consist of twenty-five (25) council members to conduct business.

Section . Order of Business. The following order of business is established for all meetings.

Call to order by the President.
Roll Call.
Ascertainment of a quorum.
Reading of the minutes of the last meeting.
Adoption of the minutes by vote.
Financial Report by Treasurer.
Unfinished Business.
New Business.
Adjournment.

Section V. All meetings shall be conducted in accordance with Robert's Rules of Order. Questions and procedures shall be decided by the ruling of the President. The majority vote of a quorum of the Board of Directors of the Tribal Council at their respective meetings shall govern and decide all issues presented unless otherwise provided in Robert's Rules of Order, the articles and by-laws of this corporation, or the Status of the Corporate Law for the State of Oregon.

Section VI. Amendments. These By laws may be amended by two-thirds vote of the eligible voting members of the corporation present at any regular meeting or any of the board or at a special meeting where there is a quorum present.



Legislative History

H.R. 1567 was introduced on March 11, 1987 by Representative DeFazio, and was referred to the House Committee on Interior and Insular Affairs. On April 8, 1987, the House Committee reported the bill with amendments. H.R. 1567 was passed by the House of Representatives on April 27, 1987.

Committee Recommendation and Tabulation of Vote

The Select Committee on Indian Affairs, in open business session of July 30, 1987, by unanimous vote of a quorum present, adopted an amendment in the nature of a substitute and ordered the bill reported with a recommendation that H.R. 1567 do pass as amended.

Cost and Budgetary Consideration

The cost estimate for H.R. 1567, as amended, as provided by the Congressional Budget Office, is set forth below:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 5, 1987.

Hon. DANIEL K. INOUYE,
Chairman, Select Committee on Indian Affairs, U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 1567, the Cow Creek Band of Umpqua Indians Distribution of Judgment Funds Act of 1987, as ordered reported by the Senate Select Committee on Indian Affairs, July 30, 1987. We estimate that enactment of this bill would result in receipts to the federal government of $20,000–$30,000 annually.

H.R. 1567 provides for the distribution of $1.5 million that was previously appropriated and recorded as an outlay on the federal budget. Of this amount, $315,000 would be invested and the interest income would be used to repay a loan made to the Band by the Bureau of Indian Affairs (BIA). The Band is currently delinquent in its payments on the loan, which are scheduled to continue through January, 2010. BIA expects that, without the funds provided by this bill, the Band would be unable to meet the payments and would default on the loan. With the funds, CBO estimates that the Band would be able to make annual payments to BIA of $20,000–$30,000.

Enactment of this bill would result in no additional costs to state or local governments.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

EDWARD M. GRAMLICH,
Acting Director.

REGULATORY IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork that would be incurred in carrying out the bill. The responsibilities of the Secretary of the Interior to implement the bill are set forth below.

Sectoin 3 requires that judgment funds awarded to the Cow Creek Band of Umpqua Tribe of Indians in the United States Claims Court docket number of 53-81L shall be distributed and used in the manner provided in the Act. Section 4(a)(2) requires that the Secretary maintain the judgment fund in an interest-bearing account in trust for the tribe, and that the Secretary disburse funds as provided in this Act within 30 days of receipt by the Portland Area Director, Bureau of Indian Affairs, of a request by the tribe's governing body for disbursement of funds.

Section 4(h)(7) allows any individual who feels he or she has been unfairly denied the right to take part in any program under subsections (b), (c), or (d) of section 4 to appeal to the Secretary. The Secretary is required to provide payments pursuant to this section to any individual who the Secretary determines, after notice and

hearing, has been unfairly denied the right to take part of such program.

Section 5(b) of the Act requires the Secratary, within one year after enactment, to prepare in accordance with the regulations contained in Part 61 of Title 25 of the Code of Federal Regulations a tribal membership roll of the Cow Creek Band of Umpqua Tribe of Indians. Section 6 of the Act allows for the participation in programs established under the Act of nontribal members who are within the group of persons described in section 4(a) of Public Law 96-251. Section 6(a) requires that the Secretary certify whether nontribal members are within such group.

Section 7 of the Act allows the tribe's governing body, not less than one year following enactment of this Act, to propose a new governing document or amendments or revisions to the tribe's interim governing document. Section 7 also provides in accordance with Section 5 that non-member Cow Creeks eligible for participation in this award shall be given the opportunity to attain membership before the tribe holds an election in accordance with its present governing documents, and that such an election will have transpired before the tribe adopts a new governing document or amendments to the present governing documents. Section 7(b) requires that the Secretary conduct a tribal election as to the adoption of that proposed document within one hundred twenty days from the date it is submitted to the Bureau of Indian Affairs. Section 7(c) requires the Secretary to approve the new governing document if approved by a majority of the tribal voters unless he or she determines that such document is in violation of any laws of the United States.

EXECUTIVE COMMUNICATIONS

The Committee has received the following correspondence from the Department of the Interior (attachments accompanying the correspondence are on file with the Senate Select Committee on Indian Affairs):

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC, June 15, 1987.

Hon. DANIEL K. INOUYE,
Chairman, Select Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This is to present our views on H.R. 1567 in the Senate, the "Cow Creek Band of Umpqua Indians Distribution of Judgment Funds Act."

We strongly oppose H.R. 1567 as passed by the House of Representatives. Enactment of this legislation would not be acceptable to the Department of the Interior because it would not be consistent with Administration policy on Indian judgment awards.

As a general rule, we believe that distributions of Indian judgment funds should benefit the aggrieved historic tribe for which the award was made. If the historic tribe is no longer in existence, we believe that judgment funds should be programmed, to the greatest extent possible, to the present-day successor tribe(s) of the

historic tribe. However, where there is no present-day successor tribe which includes mostly members who are descendants of the historic tribe, we believe that equity demands that judgment funds be distributed per capita to those persons who can demonstrate lineal descent from the aggrieved tribe.

Aboringinally, the Cow Creek Band of Umpqua Indians was a small group of Indians residing in what is now Douglas County in southwestern Oregon along the Cow Creek, a tributary of the Umpqua River. The 1853 Treaty with the Cow Creek Band (10 Stat. 1027) makes it clear that there were not many Band members in the area. In fact, the treaty included provisions for 18 pair of shoes, 18 pair of pants, 18 shirts, etc., and two dwelling houses. Although the Band was very small, clearly, the United States Government knew the number of people with whom they were dealing and where they lived.

In 1982, the present-day tribe gained Federal recognition under the Cow Creek Band of Umpqua Tribe of Indians Recognition Act (Public Law 97-391; 96 Stat. 1960). At some point, the Board of Directors, which purports to represent the successor tribe to the Cow Creek Band of Umpqua Indians which signed the 1853 Treaty, created a "roll" based on the descendancy of seven families. Although the Bureau of Indian Affairs (Bureau) provides funds for the Board to conduct genealogical research of this roll, they have refused to provide the results of that research to the Bureau. A number of people have contacted the Bureau and testified before Congressional hearings that they can document that they are Cow Creek descendants and are not included on the Board's roll and that the distribution of the judgment funds to the group represented by the Board of Directors would not be a proper distribution of the judgment funds to descendants of the Cow Creek Band. Recently, we have been informed that if the distribution plan included in H.R. 1567 as passed by the House is enacted into law, a suit will be filed against the United States alleging the unconstitutionality of the judgment fund distribution and the recognition of the Board of Directors' group.

We believe that there are two important, but separate, issues involved in H.R. 1567. The act is a judgment distribution plan and the issue of who should get this money and how it should be spent is one issue. However, H.R. 1567 also addresses a separate issue of tribal membership.

If we cannot separate there two issues in the one bill, then we must consider starting over and taking one step at a time. We believe that the first step is to establish a tribal roll which identifies Cow Creek descendants. The next step is to determine to whom the judgment funds should be distributed. We do not believe that these judgment funds should go to non-Cow Creek descendants.

This important distinction between the present-day tribe's claim to the judgment funds and the clarification of their tribal membership roll has created some confusion between the Congress and the Administration on these issues. Mr. Udall and Mr. DeFazio presented several arguments in their floor statements on April 27, 1987, to discredit the Administration's position on this bill. We think it is important at this time to address those issues for your information.

First, our assertion that the modern-day tribe may not be the successor to the historical tribe nor substantially made up of Cow Creek descendants was discounted because Congress recognized the tribe in 1982 and defined its membership.

In response, we suggest that the Committee consider that section 5 of Public Law 97-391 (the 1982 Recognition Act) closed the Cow Creek rolls thereby excluding Cow Creeks who were otherwise eligible to the members. Further, the Act established, as the tribal membership roll, the tribal roll in effect on December 19, 1982. However, in *Bushmann* v. *Cow Creek Band of Umpqua Tribe of Indians, Inc.*, No. 85-6137E (D. Oregon) (Slip Opinion p. 19), the Court found that "there is no evidence before the court that the recognized tribe has ever compiled an official roll."

Our Bureau of Indian Affairs Portland Area Director interpreted the court's opinion to mean that the tribe did not have an official tribal membership roll of persons who can trace their ancestry to the original Cow Creeks. As a direct result of this court case, the Area Director decided that the Bureau of Indian Affairs cannot enter into Indian Self-Determination Act contracts for fiscal year 1987 with the Board of Directors.

The Area Director's decision was appealed to the Assistant Secretary for Indian Affairs and is presently being briefed by the interested parties. Though no decision has yet been made on the appeal, we do recognize that the 1982 Act may be subject to the same constitutional challenge, discussed later, as the proposed bill.

Second, our conclusion that the current Board of Directors' roll is comprised of non-Cow Creeks was alleged to have been made without the appropriate research or evidence to support such claim. As stated previously, the Bureau provided funds to the Board to research Cow Creek ancestry for the people on the roll. The Board has repeatedly refused to provide the results of that research to the Bureau. This refusal, as well as that information which is available to us, leads us to conclude that the evidence does not support the Board's claim of Cow Creek ancestry.

In our review of the Catholic Church records for five of the major families on the Board's list, we determined that the ancestors of these families were not Cow Creek Umpqua. Although this review represents a very superficial review of approximately 253 of the 652 individuals on the current membership roll, it indicates that the indepth research requested, and paid for, by the Bureau is indeed necessary.

Finally, our claim that the United States may have to pay the claim twice if Cow Creek descendants file a law suit was viewed as showing a lack of understanding of the legal principles of Federal Indian law. Mr. Udall states, "The fact that the bill allows these non-tribal members descendants to participate in the judgment makes any such legal challenge to the bill ludicrous."

However, the assertions by the counsel for some members of the Cow Creek Interim Committee, a group which also claims to represent the Cow Creek Tribe, are not plainly without merit. Counsel argues that the proposed bill constitutes a Fifth Amendment taking of vested tribal rights without just compensation and a violation of due process and equal protection. With respect to the taking issue, counsel asserts that the distribution of Cow Creek

judgment funds to persons who were not intended as beneficiaries of the 1853 treaty, non-Cow Creeks and non-Indians listed on the Board of Directors' roll, is an irrational exercise of Congress' plenary power. Although, under *Delaware Tribal Business Committee* v. *Weeks*, 430 U.S. 73 (1977), judgment funds are tribal property in which individuals do not have an interest, counsel may distinguish *Weeks* from the Cow Creek judgment distribution. In *Weeks*, the Court upheld, as a rational exercise of Congress' authority, legislation which did not include a non-tribal group of Delaware Indians in a Delaware judgment distribution. However, the judgment distribution was made to two tribal groups who were descended from the injured tribal group. Consequently, congressional reliance on *Weeks* may be misplaced if a judgment distribution is made to those not descended from the injured Cow Creek Band.

Further, on the Due Process/Equal Protection issue, counsel alleges that Congress' attempt to define as a tribe all Indians in the area, without reference to a historical political relationship, is beyond Congress' plenary authority. *See*, e.g., *United States* v. *Sandoval*, 231 U.S. 28 (1913).

Section 5 of H.R. 1567 attempts to clarify the issue of tribal membership by requiring the Secretary of the Interior to prepare a tribal roll within one year of enactment of the Act. The roll would consist of th following:

> (1) all Indian individuals listed on the tribal roll approved on September 13, 1980, by the Tribe's Board of Directors, and their descendants; and
>
> (2) any individual who is a descendant of an individual considered to be a member of the Cow Creek Band of Umpqua Tribe of Indians for the purposes of the 1853 Treaty and who meets any other requirements under the tribe's bylaws at the time of enrollment.

Although we would prefer to see the Cow Creek tribe representative of the original Cow Creek members, we recognize that Congress did recognize an existing entity in the 1982 Recognition Act. Therefore, we are prepared to accept the proposed requirements, for purposes of tribal membership, if the burden of proof of Indian ancestry remains on the individual and will be reviewed and determined by the Secretary of the Interior. Currently, section 5 states that there shall be a rebuttable presumption that all individuals listed on the September 13, 1980, tribal roll are of Indian ancestry. We cannot support such a presumption.

It must be kept in mind that tribal membership and eligibility for judgment funds are not synonymous. Although we agree that the membership issue for this tribe must be addressed through legislation, we caution that the two issues must be considered separately.

We strongly urge the committee to make the amendments recommended in this report and thereby make H.R. 1567 acceptable to the Administration.

Although we have not provided a detailed analysis of our technical concerns with the bill we have attached a substitute bill for your review. Please note that in the interest of uniformity and speed, the subsitute bill specifically permits use of existing regulations to govern the application process for the tribal roll.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

ROSS O. SWIMMER,
Assistant Secretary.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes the following changes in existing law made by H.R. 1567 (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic (underlined), existing law in which no changes are proposed is shown in roman):

ACT OF DECEMBER 29, 1982

(96 Stat. 1960, P.L. 97-391)

SHORT TITLE

SECTION 1. This Act may be cited as the "Cow Creek Band of Umpqua Tribe of Indians Recognition Act".

DEFINITIONS

SEC. 2. For the purposes of this Act—

(1) the term "tribe" means the Cow Creek Band of [Umpqua Tribe of Oregon] *Umpqua Tribe of Indians;* and

(2) the term "member", when used with respect to the tribe, means a person enrolled on the membership roll of the tribe in accordance with section 5 of this Act.

EXTENSION OF FEDERAL RECOGNITION, RIGHTS, AND PRIVILEGES

SEC. 3. (a) FEDERAL RECOGNITION.—Notwithstanding any provision of the Act approved August 13, 1954 (25 U.S.C. 691 et seq.), or any other law, Federal recognition is extended to the Cow Creek Band of [Umpqua Tribe of Oregon] *Umpqua Tribe of Indians.* Except as otherwise provided in this Act, all laws and regulations of the United States of general application to Indian or nations, tribes, or bands of Indians which are not inconsistent with any specific provision of this Act shall be applicable to the tribe.

(b) RESTORATION OF RIGHTS AND PRIVILEGES.—All rights and privileges of the tribe and the members of the tribe under any Federal treaty, Executive order, agreement, or statute, or under any other Federal authority, which may have been diminished or lost under the Act approved August 13, 1954 (25 U.S.C. 691 et seq.), are restored, and the provisions of such Act shall be inapplicable to the tribe and to members of the tribe after the date of enactment of this Act.

(c) FEDERAL SERVICES AND BENEFITS.—Notwithstanding any other provision of law, the tribe and members of the tribe shall be eligible for all Federal services and benefits furnished to federally recognized Indian tribes upon the date of enactment of this Act with-

out regard to the existence of a reservation for the tribe or the residence of members of the tribe on a reservation.

(d) EFFECT ON PROPERTY RIGHTS AND OTHER OBLIGATIONS.—Except as otherwise specifically provided in this Act, no provision contained in this Act shall alter any property right or obligation, any contractual right or obligation, or any obligation for taxes already levied.

ORGANIZATION OF TRIBE; CONSTITUTION AND BYLAWS

SEC. 4. *(a)* The tribe may organize for its common welfare and adopt an appropriate instrument, in writing, to govern the affairs of the tribe when acting in its governmental capacity. The tribe shall file with the Secretary of the Interior a copy of its organic governing document and any amendments thereto.

(b) Not less than one year following enactment of the Cow Creek Band of Umpqua Tribe of Indians Distribution of Judgment Funds Act of 1987, the tribe's governing body may propose a new governing document or amendments or revisions to the interim governing document, and the Secretary shall conduct a tribal election as to the adoption of that proposed document within one hundred twenty days from the date it is submitted to the Bureau of Indian Affairs.

(c) The Secretary shall approve the new governing document if approved by a majority of the tribal voters unless he or she determines that such document is in violation of any laws of the United States.

(d) Until the tribe adopts and the Secretary approves a new governing document, its interim governing document shall be the tribal bylaws entitled 'By-Laws of Cow Creek Band of Umpqua Tribe of Indians' which bear an "Approved" date of '9-10-78,'.

(e) Until the tribe adopts a final governing document, the tribe's governing body shall consist of its current board of directors elected at the tribe's annual meeting of August 10, 1986, or such new board members as are selected under election procedures of the interim governing document identified at subsection (d).

MEMBERSHIP ROLLS

[SEC. 5. (a) IN GENERAL.—Membership in the tribe shall consist of every individual—

[(1) whose name appears on the tribal roll in effect on the date of enactment of this Act; or

[(2) who is a descendant of any individual described in paragraph (1).

[(b) LIMITATION.—Membership in the tribe pursuant to subsection (a) shall not entitle an individual, who is not otherwise entitled, to participate in any distribution of funds pursuant to a judgment under the Act approved May 26, 1980 (94 Stat. 372).]

SEC. 5. TRIBAL MEMBERSHIP.—(a) Until such time as the Secretary of the Interior publishes a tribal membership roll as mandated in subsection (b) of this section, the membership of the Cow Creek Band of Umpqua Tribe of Indians shall consist of all persons listed in the official tribal roll approved on September 13, 1980, by the tribe's Board of Directors, and their descendants. Following publication by the Secretary of the tribal membership roll mandated in subsection (b) of this section, the membership of the Cow Creek Band of

Umpqua Tribe of Indians shall consist of all persons listed on such roll.

(b) Within three hundred and sixty-five days after the enactment of the Cow Creek Band of Umpqua Tribe of Indians Distribution of Judgment Funds Act of 1987, the Secretary shall prepare in accordance with the regulations contained in Part 61 of Title 25 of the Code of Federal Regulations a tribal membership roll of the Cow Creek Band of Umpqua Tribe of Indians. Such roll shall include all Indian individuals who were not members of any other federally recognized Indian tribe on July 30, 1987 and who—

(1) are listed on the tribal roll referred to in subsection (a);

(2) are the descendants of any individuals listed pursuant to paragraph (1) born on or prior to enactment of this Act; or

(3)(A) are the descendants of any individual considered to be a member of the Cow Creek Band of Umpqua Tribe of Indians for the purposes of the treaty entered between such Band and the United States on September 18, 1853; (B) have applied to the Secretary for inclusion in the roll pursuant to subsection (c); and (C) meet the requirements for membership provided in the tribe's governing documents.

(c) The Secretary shall devise regulations governing the application process under which individuals may apply to have their names placed on the tribal roll pursuant to paragraph 3 of subsection (b).

(d) After publication of the roll in the Federal Register, the membership of the tribe shall be limited to the persons listed on such roll and their descendants: Provided, That the tribe, at its discretion, may subsequently grant tribal membership to any individual of Cow Creek Band of Umpqua ancestry who pursuant to tribal procedures, has applied for membership in the tribe and has been determined by the tribe to meet the tribal requirements for membership in the tribe: Provided further, That nothing in this Act shall be interpreted as restricting the tribe's power to impose additional requirements for future membership in the tribe upon the adoption of a new constitution or amendments thereto as provided in section 7 of the Cow Creek Band of Umpqua Tribe of Indians Distribution of Judgment Funds Act of 1987.

RULES

SEC. 6. The Secretary of the Interior may make such rules as are necessary to carry out the provisions of this Act.

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